

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 460 of 1992

with

CRIMINAL APPEAL No 470 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SATVARA HARJIBHAI JETHABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 460 of 1992
MR MEHUL CHINYOY for Petitioners
MR.Y.F. MEHTA, A.P.P. for Respondent No. 1
2. Criminal AppealNo 470 of 1992
MR MEHUL CHINYOY for Petitioners
MR. Y.F. MEHTA, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 26/11/96

ORAL JUDGEMENT

1. A very minor incident led to a serious quarrel ending into fatality so far as deceased-Babubhai is concerned. The incident happened on 18.9.1991 and it was in two parts. On that very day earlier, at about 2.00 P.M. when the daughter of the complainant-Sitaben was returning from the village pond after watering the buffaloes, one of the buffaloes strayed into the utensils being cleansed by one young girl named Kailash. Daughter of the complainant accompanying the buffaloes was one Hira and because of this minor incident, these two young girls had a quarrel and verbal exchange. This led to a serious incident late in the evening at about 7.30 P.M. The complainant's side were busy watching the T.V. in the evening and, at that time, all the three accused came there. Accused No.1 had a stick, accused No.2 also had stick and accused No.3-Chandrikaben had a wooden club used for washing clothes, referred to in the evidence "Dhoka".

2. The three accused picked up quarrel on the basis of the incident of the afternoon and started hurling abuses. Naturally this was resented by the complainant's side and this led further. All the accused made free use of the weapons that they were carrying. The main target was one lady, the said girl-Hira and the deceased tried to intervene and he was severely beaten with sticks by accused No.2-Aravind. Sitaben also intervened and she was also beaten by accused No.3-Chandrikaben.

3. In the process, Hira received some injuries and so did Sitaben, but the injuries that were received by Babubhai on his head proved fatal and he died.

4. Under the circumstances, it can well be appreciated that there were eye-witnesses available and it is needless to state that they corroborated the prosecution case to the maximum possible extent. Not only that, Sitaben, one of the injured, lodged the complaint immediately and the names of the accused were there right from the very beginning.

5. In the circumstances, it was obvious, neither their identity was in doubt nor was there speculation possible as to the role played by each other. The entire story was clear cut. This has naturally led the learned Trial Judge to accept the case of the prosecution and convicted all the three accused.

6. In the appeals, a serious attempt was made initially to assail the order of conviction on all counts. However, it soon became apparent that, so far as the case against accused No.2-Aravind Harji is concerned, the appellants have no scope. The order of conviction with regard to accused No.2-Arvind Harji, in our opinion, has to be sustained.

7. With regard to Satvara Harjibhai-accused No.1 and accused No.3-Chandrikaben, their case will be examined at greater length.

8. These two appeals are respectively filed by accused Nos.1 and 2, which is Criminal Appeal No.460 of 1992, and accused No.3-Chandrikaben, which is Criminal Appeal No.470 of 1992.

9. The charges are at Ex.8. Charge of offence punishable under Section 302 is framed only against accused no.2, though the wording of the charge, Ex.8, is that all the three accused were responsible for offence under Section 302. However, in the charge itself, there is a clear reference to the part played by accused No.2-Aravind as the incident relating to the death of the deceased is of the sole authorship of the said Aravind-accused No.2. There is no mention either of Section 34 or Section 114 of the I.P.C. to bring in the remaining accused to the principal offence under Section 302 along with accused No.2. In other words, there is no case of the prosecution as to offence under Section 302 having either been aided or abetted or that the remaining accused having shared common intention with accused No.2 for that purpose. At least the charge as framed at Ex.8 does not reveal it.

10. When we go to paragraph 2 of the charge, it can be seen that the charges under Sections 307, 323, 325, and 504 read with Section 114 are alleged against all the three accused, presumably it would be in connection with the remaining to injured, namely, Hira and Sitaben.

11. In spite of this, the learned Trial Judge, in his judgment dated 10.4.1992, has convicted all the three accused under Section 302 and that, in our opinion, is not correct.

12. Even if the offence is analysed, what emerges is that, at about 7.30 P.M., all the three accused entered the house of the complainant and picked the quarrel and, as stated above, it resulted into serious injury leading

to the death of Babubhai. The part played by accused Nos. 1 and 3 in connection with the deceased is not to be found anywhere. In other words, there is no overt act on their part with regard to the incident as to the deceased.

13. No doubt, Sitaben and Hira both have been injured and, in that connection, there is material on record showing the part played by the accused.

14. Coming to the capital offence under Section 302, in absence of any material on record and even a charge whereby either a contributory liability can be laid at the door of accused Nos.1 and 3 jointly or individually along with accused No.2 or there being an allegation of aiding and abetting, thereby paying a direct part to the incident, in our opinion, the conviction under Section 302 of accused Nos. 1 and 3 cannot be sustained.

15. Coming to the offence under Section 307, when we turn to the medical evidence and the injury certificates that are produced by Dr. Thakkar, P.W.1, Ex.18, it is clear that all the injuries on the person of Sitaben and Hira are simple. The injuries were capable of being caused by hard and blunt substance which a stick can certainly be the one.

16. There being evidence on record, accused Nos.1 and 3 both can certainly be convicted for the offence under Section 323, but not for offence under Sections 325 and 307 in any circumstances. The injuries were not found on either Sitaben or Hira anywhere on the body which could be described as a vital part. Those injury certificates are at Ex.19 and 20. They are abrasions and bruises either on the palms or on the legs or on the buttocks.

17. Under the circumstances, in the appeal filed by accused Nos. 1 and 2, i.e. Criminal Appeal No.460 of 1992, appeal of accused No.2-Arvindbhai Harjibhai is dismissed and appeal of accused No.1 is accepted. The conviction under Section 302 and also the conviction under Section 325 and 114 of I.P.C. are set aside. The conviction under Section 323 is confirmed.

18. In the appeal filed by accused No.3, i.e. Criminal Appeal No.470 of 1992, the appeal is accepted and the order of conviction under Sections 302, 325 read with Section 114, I.P.C. is set aside. The conviction under Section 323, I.P.C. is confirmed. The net result is that, accused No.1-Satvara Harjibhai Jethabhai and accused No.3-Chandrikaben are ordered to be released

forthwith, if not required in any other case.

...